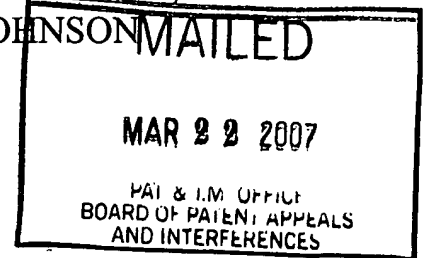


UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MICHAEL W. WALLACE, TROY STEVEN ACOTT,
LARRY ALAN WESTERMAN and CARL JOHNSON

Application No. 10/066,144



ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences (BPAI) on December 1, 2006. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is wherewith being returned to the examiner. The matters requiring attention prior to docketing are identified below.

ACKNOWLEDGMENT OF REPLY BRIEF

On October 19, 2006, the examiner mailed a communication acknowledging receipt of Appellants' Reply Brief, dated July 24, 2006. A review of the Response to Reply Brief reveals that the examiner did not provide proper acknowledgment.

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The comments made by the examiner would constitute being a Supplemental Examiner's Answer.

The Examiner's Response to Reply Brief as set forth in MPEP § 1208, which states:

(1)After receipt of a reply brief in compliance with § 41.41, the primary examiner must acknowledge receipt and entry of the reply brief. In addition, the primary examiner may withdraw the final rejection and reopen prosecution or may furnish a supplemental examiner's answer responding to any new issue raised in the reply brief.

(2)A supplemental examiner's answer responding to a reply brief may not include a new ground of rejection.

(b)If a supplemental examiner's answer is furnished by the examiner, appellant may file another reply brief under § 41.41 to any supplemental examiner's answer within two months from the date of the supplemental examiner's answer.

A review of the Response to Reply Brief reveals that the examiner did not provide proper approval.

Accordingly, it is ORDERED that the application is returned to the Examiner to:

- 1) vacate the examiner Acknowledgment to the Reply Brief mailed October 19, 2006;

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- 2) proper acknowledgment of the Reply Brief is required and/or appropriate consideration of the Reply Brief dated July 24, 2006;
- 3) acquiring approval for any Supplemental Examiner's Answer in response to the Reply Brief mailed July 24, 2006, if appropriate; and
- 4) for such further action as may be deemed appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES



PATRICK J. NOLAN

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PJN/pgc

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